



**Homeland  
Security**

May 1, 2020

MEMORANDUM FOR: Mark A. Morgan  
Acting Commissioner  
U.S. Customs and Border Protection

Scott K. Falk  
Chief Counsel  
U.S. Customs and Border Protection

FROM: Peter E. Min (b) (6)  
Deputy Officer for Programs and Compliance  
Office for Civil Rights and Civil Liberties

Susan Mathias /s/  
Assistant General Counsel, Legal Counsel Division  
Office of the General Counsel

SUBJECT: Complaint No. 17-03-CBP-0085<sup>1</sup>

**Purpose:**

Pursuant to 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, this memorandum provides recommendations in connection with the above-referenced complaint alleging that U.S. Customs and Border Protection (CBP) violated the civil rights and civil liberties of a U.S. citizen (USC) minor (age 15) while detained at the Rio Grande City U.S. Border Patrol (USBP) station. The U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) has conducted an investigation into these allegations, specifically, that USBP neglected the minor while in custody. CRCL's review found that the allegations of neglect were unsubstantiated; CRCL found however, that there is a lack of USBP policy and procedures regarding the verification of U.S. citizenship,<sup>2</sup> although USBP explained that these procedures are generally addressed in current laws and regulations. Therefore, CRCL is providing recommendations to CBP to ensure USBP develops more

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<sup>1</sup> The complainant's personal identifying information (PII) is set out in the attached PII memo, so that this memo can be freely shared (without that attachment) with those who don't have a need to know this personally identifying information.

<sup>2</sup> CRCL continues to receive allegations specific to CBP's inability to verify individuals U.S. citizenship claims. Specifically, CRCL is currently investigating complaint 19-10-CBP-0505, which identifies allegations concerning a 16-year old U.S. citizen who was held in CBP's custody for over three weeks before his U.S. citizenship claim was verified. While CRCL has not formally substantiated these claims, CBP should be aware that there is an ongoing investigation into a complaint concerning the same matters.

expansive policy or guidance that provides specific instruction to field agents of the resources available to determinate alienage.

### **Background:**

On December 12, 2016, CRCL received an email from the DHS Office of Inspector General (OIG), referring an email from Health and Human Services (HHS), Office of Refugee Resettlement (ORR), alleging that USBP violated the civil rights and civil liberties of a U.S. citizen minor (age 15), while she was detained at a U.S. Border Patrol station. According to ORR, the minor alleged that USBP apprehended her in Roma, Texas after she crossed illegally into the U.S. on a raft. USBP then transported her to the Rio Grande City USBP station. The minor claimed that she did not receive a sufficient amount of food and was forced to sleep in an overcrowded room on a cold floor.

### **Investigation:**

CRCL opened a complaint based on the allegations and sent USBP a request for information on March 17, 2017. USBP provided the requested information on August 2, 2017, and additional information on August 15, 2017. In addition, CRCL conducted an interview with the Supervisory Border Patrol Agent (SBPA) on June 7, 2018, who was the supervisor on staff during the processing of the minor.

In response to the request for information from CBP, CRCL received a report of investigation (ROI), database records, and an activity log. Based upon our review of the ROI, a U.S. Border Patrol Agent (BPA) encountered the minor on November 18, 2016, in the Rio Grande Valley, Texas Border Patrol Sector. The BPA determined the minor had unlawfully entered the United States through Mexico, traveling from Guatemala. The minor was arrested, as part of a group of twelve illegal aliens, and transported to the Rio Grande City Station for further processing using the CBP Portal (e3), Integrated Automated Fingerprint Identification System (IAFIS), and the Automated Biometric Identification System (IDENT) systems. The minor's I-213 indicated that she claimed to be born in San Sebastian, San Marcos, Guatemala; the I-213 also included a note that stated the minor claimed to be a USC born in Atlanta, GA. The records confirm the minor provided the BPA with a U.S. social security card during processing. The minor was classified as an unaccompanied alien child (UAC) and referred to HHS ORR on November 20, 2016.

Based on the complainant's claim that she was a USC, a minor, and possessed a social security card, ORR was able to verify the claim by coordinating with the Department of State, the minor's family and the Social Security Administration to obtain a copy of the minor's U.S. passport, birth certificate from the state of Georgia, and verification of the social security card. Following the several day process by ORR to verify the minor's citizenship and coordinate with relatives, the minor was released to family members in Georgia.

After reviewing the ROI and additional investigative material provided by USBP, CRCL investigated whether CBP might have violated their policy and procedures regarding verification of citizenship. Accordingly, CRCL conducted an interview with the Supervisory Border Patrol Agent from the Rio Grande City Border Patrol station. During this interview CRCL inquired about the existing policies and procedures that agents follow in order to verify an individual's claim of U.S. citizenship. Based on this interview, CRCL was informed by USBP that there are no policies or

standard procedures in place, at the local level, that specifically instruct agents on how to verify an individual's citizenship status beyond standard DHS database checks.<sup>3</sup> To verify that there were no policies or procedures in place, or, in the alternative, to obtain a copy of any overarching CBP policies, CRCL reached out to the CBP Privacy and Diversity Office (PDO), which confirmed in writing on December 3, 2018, that there are no existing CBP policies or procedures specific to the verification of U.S. citizenship, but that there are laws, regulations, and existing training that generally govern alienage and citizenship status determination.<sup>4</sup>

### **Analysis:**

CRCL did not substantiate the allegations regarding conditions in CBP custody. Based on the review of the activity logs provided, CRCL confirmed that the minor received three meals per day while detained by USBP and was provided with the appropriate mat and blanket for sleeping. CRCL was unable to determine if the hold room that the minor slept in during her detention at the USBP station was in fact overpopulated and cold but has typically found during onsite investigations that the hold rooms are within the required temperatures.

(b) (5)



CRCL inquired with U.S. Immigration and Customs Enforcement (ICE) to determine if ICE had an existing policy regarding the verification of an individual's claim to U.S. citizenship. In response, ICE directed CRCL to Policy No. 16001.2, *investigating the Potential U.S. Citizenship of Individuals Encountered by ICE*, which establishes procedures to "carefully and expeditiously

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<sup>3</sup> In response to CRCL's request for information, CBP provided two policies specific to mandatory database checks that USBP agents have to conduct when processing an alien. Those policies include *The Mandatory Use of Federated Person Query 2 and Procedures for Terrorist Screening Database Matches (2015)* and *Use of the updated E3 Detention Module (2013)*.

<sup>4</sup> Individuals entering the United States must do so at a port of entry. 19 U.S.C. §§ 1949, 1933. Federal laws and regulations govern alienage and citizenship status determinations. Section 215 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1185(b), makes it unlawful for a U.S. citizen to enter or depart from the United States without a valid U.S. passport or other designated document. See also 22 C.F.R. §§ 53.1, 53.2; 8 C.F.R. § 235.1(b) (providing the exceptions to a U.S. passport). A Social Security Card is not on the list of exceptions to a U.S. passport, id, and is not indicative of U.S. citizenship. For minors under the age of 16, as in the case of the complainant, other acceptable documents include "an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services." 22 C.F.R. § 53.2(b)(11)(i). In circumstances where a U.S. citizen presents at a port of entry and "fails to satisfy" CBP that s/he is a U.S. citizen without any of the accepted evidence of U.S. citizenship, the CBP "shall thereafter [] inspect[] [the individual] as an alien." 8 C.F.R. § 235.1(b). USBP agents are also trained at the Academy to look for specific evidence of citizenship. See Instructor Guide, Administrative Law, Day 1 (previously provided to CRCL). In the training, a Social Security card is not evidence of U.S. citizenship.

investigate and analyze the potential U.S. citizenship of individuals encountered by ICE.”<sup>5</sup> In general, ICE personnel are instructed to resolve an individual’s claim within a 48 hour period, by utilizing DHS data systems, and any other reasonable means available (i.e., A-file, vital records databases managed by the state, and any other pertinent documents). While this policy is specific to ICE operations, it is a best practice that can potentially be applied across operational components conducting similar inquiries.<sup>6</sup>

**Findings:**

Based on the review of the information provided, CRCL does not substantiate the allegations related to the neglect of the minor, as food and other items were provided in accordance with policy.

(b) (5)

**Recommendations:**

Based upon our investigation, CRCL makes the following recommendations:

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3. (b) (5)

It is CRCL’s statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. We look forward to working with CBP on this issue. We request that CBP provide a response to CRCL within 60 days on whether CBP concurs or non-concurs with these recommendations. If you concur, please include an action plan. You can send your response by email to (b) (6) at (b) (6)

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<sup>5</sup> U.S. Immigration and Customs Enforcement, Policy No. 16001.2, *Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE*. November 10, 2015. Available at: <https://www.ice.gov/sites/default/files/documents/Document/2017/16001.2.pdf>

<sup>6</sup> Although the requirements related to ICE and CBP detention are different, in this instance, they are similarly situated as both ICE and CBP must immediately address claims of U.S. citizenship, and must do so thoroughly given the concerns associated with holding a citizen in DHS custody.

Copies to:

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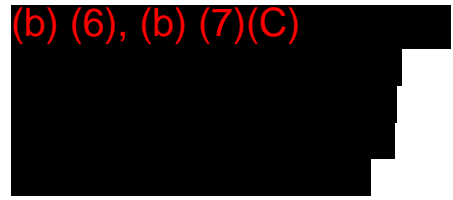
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(b) (6), (b) (7)(C)

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FROM: Peter E. Min (b) (6)  
Deputy Office (b) (6) liance  
Office for Civil Rights and Civil Liberties

Susan Mathias /s/  
Assistant General Counsel, Legal Counsel Division  
Office of the General Counsel

SUBJECT: Attachment to Recommendations Memorandum for  
Complaint No. 17-03-CBP-0085 (Complainant PII)

In order to allow the attached memorandum to be freely shared, it does not include personally identifiable information (PII) for the complainant. This attachment is offered to assist those reviewing CRCL's recommendations who need to know that information:

Name: (b) (6)

Alien Number: (b) (6)

This attachment should be attached to the recommendations memorandum only for those who have a need to know this personally identifiable information.